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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,770	02/12/2002	Herbert Lyvirm Lacey III	56126.000366	7864

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EXAMINER

RYMAN, DANIEL J

ART UNIT	PAPER NUMBER
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2665

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/683,770

Applicant(s)

LACEY, HERBERT LYVIRN

Examiner

Daniel J. Ryman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☒ Claim(s) 1,4,5,8,9 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: in paragraph 2, line 2, “data a physical” should be “data over a physical”.

Appropriate correction is required.

Claim Objections

2. Claim 1 is objected to because of the following informalities: in lines 11-14, “setting a waiting_for_write_credit flag is to true . . . , if it is determined that the write credit count is not greater than 0” should be “if it is determined that the write credit count is not greater than 0, setting a waiting_for_write_credit flag *to* true”. Appropriate correction is required.
3. Claim 4 is objected to because of the following informalities: in lines 15-18, “setting a waiting_for_write_credit flag is to true . . . , if it is determined that the write credit count is not greater than 0” should be “if it is determined that the write credit count is not greater than 0, setting a waiting_for_write_credit flag *to* true”. Appropriate correction is required.
4. Claim 5 is objected to because of the following informalities: in line 12, “flag is to true” should be “flag *to* true”. Appropriate correction is required.
5. Claim 8 is objected to because of the following informalities: in line 16, “flag is to true” should be “flag *to* true”. Appropriate correction is required.
6. Claim 9 is objected to because of the following informalities: in lines 15-18, “one or more instructions for setting a waiting_for_write_credit flag is to true . . . , if it is determined that the write credit count is not greater than 0” should be “if it is determined that the write credit

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count is not greater than 0, one or more instructions for setting a waiting_for_write_credit flag to true". Appropriate correction is required.

7. Claim 12 is objected to because of the following informalities: in lines 21-25, "one or more instructions for setting a waiting_for_write_credit flag is to true . . . , if it is determined that the write credit count is not greater than 0" should be "if it is determined that the write credit count is not greater than 0, one or more instructions for setting a waiting_for_write_credit flag to true". Appropriate correction is required.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art in view of Smith et al. (USPN 5,784,358).

10. Regarding claims 1, 5, and 9, Applicant implicitly discloses as prior art a method and system for scheduling and transmitting transmit protocol messages, the method comprising the steps of and the system comprising means for: receiving a data frame for transmission to a data pump (§ 6); inserting the data frame into a transmit message queue (§ 6); determining whether a write credit count is greater than a sufficient number of credits (§ 6); dequeuing the data frame if it is determined that the write credit count is greater than a sufficient number of credits (§ 6); sending the data frame to the data pump following the dequeuing of the data frame (§ 6); decrementing the write credit count following sending of the data frame to the data pump (§ 6).

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Although Applicant discloses determining whether a write credit count is greater than a sufficient number of credits (§ 6), Applicant does not expressly disclose determining whether a write credit count is greater than 0. It is generally considered to be within the ordinary skill in the art to adjust, vary, select, or optimize the numerical parameters or values of any system absent a showing of criticality in a particular recited value. The burden of showing criticality is on applicant. In re Mason, 87 F.2d 370, 32 USPQ 242 (CCPA 1937); Marconi Wireless Telegraph Co. v. U.S., 320 U.S. 1, 57 USPQ 471 (1943); In re Schneider, 148 F.2d 108, 65 USPQ 129 (CCPA 1945); In re Aller, 220 F.2d 454, 105 USPQ 233 (CCPA 1055); In re Saether, 492 F.2d 849, 181 USPQ 36 (CCPA 1974); In re Antonie, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Since Applicant discloses determining whether a write credit count is greater than a sufficient number of credits, it would have been obvious to determine whether the credit count is greater than any number of credits, including 0, absent a showing of criticality by Applicant.

Applicant does not disclose as prior art setting a waiting-for-write-credit flag to true, indicating that the transmit processor has a frame waiting for transmission, but lacks sufficient write credits to send the frame to the data pump, if it is determined that the write credit count is not greater than 0. Smith teaches in a system for scheduling and transmitting messages, setting a `waiting_for_write_credit` flag (higher priority “cell must go” flag) to true, indicating that the transmit processor has a frame waiting for transmission, but lacks sufficient write credits to send the frame to the data pump, if it is determined that the write credit count is not greater than 0 (col. 13, line 65-col. 14, line 12) where it is implicit that this ensures that a frame is transmitted within a given period of time. Therefore, it would have been obvious to one of ordinary skill in

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the art at the time of the invention to set a waiting-for-write-credit flag to true, indicating that the transmit processor has a frame waiting for transmission, but lacks sufficient write credits to send the frame to the data pump, if it is determined that the write credit count is not greater than 0 in order to ensure that a frame is transmitted in a timely fashion.

11. Regarding claims 2, 6, and 10, Applicant's admitted prior art in view of Smith suggests receiving an additional write credit from the data pump (Applicant: ¶ 6); incrementing the write credit count to reflect the received additional write credit (Applicant: ¶ 6); determining whether the waiting_for_write_credit flag is set to true (Smith: col. 13, line 65-col. 14, line 12); and dequeuing the data frame if it is determined that the waiting_for_write_credit flag is set to true (Smith: col. 13, line 65-col. 14, line 12); sending the data frame to the data pump following the dequeuing of the data frame (Applicant: ¶ 6); decrementing the write credit count following sending of the data frame to the data pump (Applicant: ¶ 6).

12. Regarding claims 3, 7, and 11, Applicant's admitted prior art in view of Smith disclose transmitting the data frame on to a receiving peer end following the sending of the data frame to the data pump (Applicant: ¶¶ 2-6).

13. Regarding claims 4, 8, and 12, Applicant's admitted prior art in view of Smith suggests determining whether the data frame was a part of a message including at least one additional frame following the decrementing of the write credit count (Applicant: ¶ 6); determining whether a write credit count is greater than 0 if it is determined that the data frame was a part of a message including at least one additional data frame (Applicant: ¶ 6); receiving an additional data frame (Applicant: ¶ 6); inserting the additional data frame into the transmit message queue (Applicant: ¶ 6); dequeuing the additional data frame if it is determined that a write credit count

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is greater than 0 (Applicant: ¶ 6); sending the additional data frame to the data pump following dequeuing of the data frame (Applicant: ¶ 6); decrementing the write credit count following the sending of the additional data frame to the data pump (Applicant: ¶ 6); and setting a waiting_for_write credit flag to true, indicating that the transmit processor has a frame waiting for transmission, but lacks sufficient write credits to send the frame to the data pump, if it is determined that the write credit count is not greater than 0 (Smith: col. 13, line 65-col. 14, line 12).


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Ryman whose telephone number is (571)272-3152. The examiner can normally be reached on Mon.-Fri. 7:00-4:30 with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel J. Ryman
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